

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CONNECTICUT GENERAL LIFE	:	
INSURANCE COMPANY	:	
	:	
Plaintiff,	:	CIVIL ACTION
	:	
v.	:	No. 96-CV-4598
	:	
PATRICIA M. CURRY KELLY, et al.,	:	
Defendants.	:	

MEMORANDUM

GREEN, S.J.

September , 1999

Presently pending is Defendant Charlotte M. Thuresson Kelly's ("Defendant Charlotte Kelly") motion for summary judgment and the remaining defendants' response in opposition thereto. For the reasons set forth below, Defendant Charlotte Kelly's motion will be granted.

I. FACTUAL BACKGROUND

Plaintiff, Connecticut General Life Insurance Company, issued a policy of insurance to Daniel J. Kelly, Sr., through his employer, E.I. DuPont de Nemours & Company. The policy provided that:

Any part of the insurance payable for loss of life for which there is no designated beneficiary living at the death of the employee or surviving the death of the employee shall be payable in a single sum to the employee's executors or administrators.

(Pl.'s Compl. at Ex. A). On March 1, 1990, Daniel Kelly executed a beneficiary designation form with regard to the life insurance policy. At that time, he designated that the non-contributory proceeds of the policy be paid in a single sum to Charlotte M. Thuresson, if living at the time of his death, and if not then living, then to his wife Patricia Kelly and his children, M. Andrea Kelly, Carolyn Killion, Daniel J. Kelly, III, and Timothy A. Kelly. (Pl.'s Compl. at Ex. B).

Sometime before June 28, 1991, Daniel Kelly, Sr. divorced Patricia M. Kelly and married Charlotte M. Thuresson Kelly. He thereafter signed a change of beneficiary designation form, altering the distribution of the proceeds of the contributory portion of the life insurance policy, distributing 66.66% of the proceeds to Patricia Kelly and 33.33% of the proceeds to Charlotte Thuresson Kelly. (Pl.'s Compl. at Ex. C).

Mr. Kelly died on May 30, 1994, and at the time of his death, Connecticut General Life concluded that it could not determine how the insured intended for the non-contributory proceeds of the policy to be distributed because he left the non-contributory proceeds section of the insurance policy's beneficiary designation form blank. (Pl.'s Compl. at ¶ 16). At the time of Mr. Kelly's death, Charlotte Kelly, Patricia Kelly, and Daniel Kelly, Sr.'s children asserted claims to the non-contributory proceeds of the life insurance policy. In an attempt to settle the conflicting claims to the \$69,000.00 proceeds of the non-contributory portion of the policy, Connecticut General Life Insurance Company filed this interpleader action seeking declaratory relief pursuant to the provisions of the Employee Retirement Income Security Act, 29 U.S.C. §1001 *et seq.*

On October 13, 1998, Defendant Charlotte Kelly filed a Motion for Summary Judgment, asserting that she was entitled to payment of the non-contributory proceeds of Mr. Kelly's term life policy as a matter of law. Patricia Kelly and the remaining defendants opposed the motion, claiming, among other things, that discovery had not been completed, and they needed additional time to complete the deposition of Defendant Charlotte Kelly. Upon consideration of the Motion and the remaining defendants' response thereto, I dismissed the Motion for Summary Judgment without prejudice to Defendant Charlotte Kelly renewing the motion after the completion of discovery.

Several months after I entered the Order dismissing the motion for summary judgment without prejudice, counsel for Defendant Charlotte Kelly notified the Court by letter

that Patricia Kelly and the remaining defendants failed to timely complete their discovery efforts. In fact, counsel for Defendant Charlotte Kelly informed the Court that no meaningful efforts to complete the deposition of Ms. Kelly ever took place. Thus, upon request of Defendant Charlotte Kelly, I reinstated the Motion for Summary Judgment and allowed the parties ten (10) days from the date of the Order to supplement the record. To date, I have not received supplemental memoranda on the issue of summary judgment from the parties. Therefore, I will rule on the motion for summary judgment based on the current record.

II. Legal Standard

According to Rule 56(c) of the Federal Rules of Civil Procedure, summary judgment shall be rendered when it is shown that there is no genuine issue as to any material fact, and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). A party seeking summary judgment always bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions of "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, "which it believes demonstrate the absence of a genuine issue of material fact." Celotex v. Catrett, 477 U.S. 317, 323, 106 S.Ct. 2548, 2553 (1986). Once the moving party demonstrates the absence of any genuine issue of material fact, the burden shifts to the nonmoving party to point to evidence that supports its contention that a genuine issue exists. Id.

If the nonmoving party asserts that he cannot adequately provide evidence that a genuine issue of material fact exists because discovery has not been completed, the court may, in its discretion, grant a continuance to allow the party to obtain the information. See Fed. R. Civ. P. 56(f). If, however, the nonmoving party has had an adequate opportunity to discover the information, then summary judgment may be granted even if the information is solely in the

possession of the moving party. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 257, 106 S.Ct. 2505, 2514-15 (1986).

III. DISCUSSION

As stated above, Daniel J. Kelly, Sr. executed a beneficiary designation form for the term life insurance policy at issue in this case in March 1990. On the form, he named Charlotte Thuresson as the primary beneficiary of the non-contributory proceeds of the policy. Sometime before June 28, 1991, Mr. Kelly married Charlotte Thuresson. Mr. Kelly subsequently changed the contributory portion of his policy on June 28, 1991, allotting 66.66% of the contributory portion of the policy to Patricia M. Kelly and 33.33% to Charlotte Kelly. (Def.'s Mem. in Supp. of M. for Summ. J. at Ex. C). The non-contributory beneficiary was not changed by the June 28, 1991 modifications. Id.

Based on the facts detailed above, Charlotte Kelly asserts that, as the designated beneficiary, she is entitled to collect the non-contributory proceeds of Daniel J. Kelly, Sr.'s term life insurance policy as a matter of law. Accordingly, she now moves for summary judgment and an order directing Connecticut General Life Insurance Company to pay her the proceeds of the non-contributory portion of the term life insurance policy issued to Daniel J. Kelly, Sr.

In response to Charlotte Kelly's motion for summary judgment, Patricia Kelly and the remaining defendants contend that a genuine issue of material fact exists as to who is entitled to receive the proceeds of the non-contributory portion of Mr. Kelly's life insurance policy. To prove that a genuine issue of material fact exists, Patricia Kelly and the remaining defendants argue that a Court Order, issued on November 13, 1992, in connection with the divorce proceedings of Daniel and Patricia Kelly, directed Mr. Kelly to designate them as the

beneficiaries of all of his life insurance policies. (Def. Patricia Kelly's Mem. in Opp. to Summ. J. at 8).¹

A close examination of the November 13, 1992 Order, however, reveals that it simply mandates that Mr. Kelly ensure that his ex-wife and children are named as beneficiaries for predetermined dollar amounts on his term policy(s) obtained through DuPont.² It does not specify whether the dollar amounts must originate from the contributory or non-contributory proceeds of the policy. In compliance with the Order, Mr. Kelly's term policy directs that his ex-wife, Patricia Kelly, receive 66.66% of the contributory proceeds of the policy. The contributory proceeds of the policy totaled \$215,000.00. (Def.'s Mem. in Supp. of M. for Summ. J. at Ex. C). Thus, at his death, Mr. Kelly's designation of his ex-wife Patricia as beneficiary of 66.66% of the contributory proceeds of his term life policy, issued through the DuPont Company, satisfied the requirements of the Court Order requiring him to insure his ex-wife and children in the amount of \$140,000.00 collectively.

Moreover, there is nothing in the language of the Order that precludes Mr. Kelly from also naming Charlotte Kelly as a beneficiary of the non-contributory portions of the term

¹ Patricia Kelly and the remaining defendants also assert that they will provide additional evidence at the time of trial to prove that Mr. Kelly promised to name his first wife and children as beneficiaries to any and all life insurance policies. Id. To date, however, they have not provided the Court with evidence supporting these claims.

² The Court Order, issued by the Court of Common Pleas of Delaware County, Pennsylvania states in relevant part:

The following shall be named as beneficiaries on policy(s) of term insurance in effect on the life of Daniel J. Kelly through the Dupont Company on May 28, 1991:

- a) Patricia M Curry Kelly - \$40,000.00
- b) M. Andrea Kelly - \$35,000.00
- c) Stephen Kelly - \$35,000.00
- d) Carolyn Killion - \$10,000.00
- e) Daniel Kelly - \$10,000.00
- f) Timothy Kelly - \$10,000.00

(Def. Charlotte Kelly's Mem. in Supp. of M. for Summ. J. at Ex. D) .

policy. The undisputed facts in this case show that Daniel J. Kelly, Sr.'s term life insurance policy required policyholders to designate the beneficiary of the proceeds of the policy on appropriate insurance records. On March 14, 1990, in compliance with the policy's terms, Mr. Kelly completed a Change of Beneficiary Provision form, designating Charlotte Thuresson as the beneficiary of the non-contributory portion of the proceeds of the policy, "if she was living at the time of his death." (Def. Charlotte Kelly's Mem. in Supp. of M. for Summ. J. at Ex. B). Thus, as of March 14, 1990, Charlotte Kelly was the named beneficiary of the non-contributory proceeds of the policy. Since Mr. Kelly did not change the non-contributory beneficiary designation of the policy at any time before his death, Charlotte Kelly remained the designated beneficiary of the non-contributory proceeds of the policy at the time of his death.

As Charlotte Kelly is the named beneficiary of the non-contributory proceeds of Daniel J. Kelly, Sr.'s term life policy, and the Court Order issued by the Delaware County Court of Common Pleas is satisfied by Mr. Kelly's designation of the contributory proceeds of the policy, I will grant Charlotte Kelly's motion for summary judgment and order Connecticut General Life Insurance Company to pay the proceeds of the non-contributory portion of Daniel J. Kelly, Sr.'s term life insurance policy to Charlotte Kelly. I make no findings as to the proper distribution of the contributory portions of the policy as that issue was not before me in this case. An appropriate Order follows.

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	:	
PATRICIA M. CURRY KELLY, et al.,	:	
Defendants.	:	

ORDER

AND NOW, this _____ day of September 1999, upon consideration of the Motion of Defendant Charlotte M. Thuresson Kelly for summary judgment, and the response thereto, **IT IS HEREBY ORDERED** that:

1. Summary Judgment is entered in favor of Charlotte M. Thuresson Kelly;
and
2. The non-contributory portion of the life insurance policy issued to Daniel J. Kelly, Sr. shall be paid to Defendant Charlotte M. Thuresson Kelly.

BY THE COURT,

CLIFFORD SCOTT GREEN, S.J.